



GUIDELINES & RESOURCES FOR FCC APPLICANTS SECTION 106 SUBMITTALS

Revised May 2009

Introduction

The Federal Communications Commission (FCC) executed the *Nationwide Programmatic Agreement for Review of Effects on Historic Properties For Certain Undertakings Approved by the Federal Communications Commission*, which took effect on March 7, 2005. The Nationwide Programmatic Agreement (NPA) streamlines the review process for specified communications facilities under Section 106 of the National Historic Preservation Act of 1966, as amended (Section 106). The NPA's procedures exclude certain actions from review, modify the process for identifying historic properties, establish contact procedures and response times for consultation with State Historic Preservation Offices, institute the use of standard submittal forms, and provide guidance and procedures for consultation with Indian tribes.

Under Section 106 and its implementing regulations 36 CFR Part 800, the FCC must consider the effects of an activity under its jurisdiction, such as tower construction, on historic properties and take appropriate measures to avoid, minimize, or mitigate any adverse effects. While the FCC may authorize its applicants to initiate consultation, compile information, and conduct necessary studies, the FCC remains legally responsible for complying with Section 106 for the activities under its jurisdiction. The Maryland Historical Trust (MHT) serves as Maryland's State Historic Preservation Office (MD SHPO) and plays a key role in the Section 106 process defined in 36 CFR Part 800 and the NPA. The NPA outlines the responsibilities of applicants to solicit comments from parties that may be affected by an undertaking, identify historic properties within an undertaking's Area of Potential Effect (APE), assess the effects of an undertaking on historic properties, and consult with MHT regarding their findings.

MHT prepared these *Guidelines & Resources* to assist the FCC's applicants and their consultants with the Section 106 consultation process under the NPA, as well as the nationwide Collocation Programmatic Agreement, for undertakings in Maryland. This guidance updates and replaces the former *Maryland Historical Trust Guidelines & Resources for FCC's Licensees and Applicants – Section 106 Submittals, Effective March 2005*. The guide includes sources of additional information to facilitate the preparation of submittals for MHT review and the resulting consultation process. These *Guidelines & Resources* are intended to be used in conjunction with the NPA and assume the reader's familiarity with the agreement document.

FCC – Nationwide Programmatic Agreement Resources

FCC applicants and their consultants should carefully read the NPA and become familiar with its relevant responsibilities and review processes. The FCC provides copies of the NPA, the *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, submittal forms, E-106 process information, and substantive guidance materials through its website. Follow the links listed below to access these resources.

- Historic Preservation for Tower Siting: http://wireless.fcc.gov/siting/historic_preservation.html
- FCC Nationwide Programmatic Agreement (NPA):
http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-222A3.pdf
- FCC Collocation Programmatic Agreement: <http://wireless.fcc.gov/releases/da010691a.pdf>
- FCC Form 620 (new towers): <http://www.fcc.gov/Forms/Form620/620.pdf>
- FCC Form 621 (collocations): <http://www.fcc.gov/Forms/Form621/621.pdf>
- FCC E-106: http://wireless.fcc.gov/outreach/index.htm?job=tower_notification

Area of Potential Effects

The NPA defines the Area of Potential Effects (APE) for direct effects and the APE for visual effects for undertakings covered by the agreement, as follows:

1. The *APE for direct effects* is the area of potential ground disturbance and any property that will be physically altered or destroyed by the undertaking, including any proposed access roads and support facilities.
2. The *APE for visual effects* is the geographic area in which the undertaking has the potential to introduce visual elements that diminish or alter the setting – where the setting is a character defining feature of a historic property. The NPA defines the following presumed APE for visual effects, unless the applicant and MHT have mutually agreed to an alternative APE given topographic, visual or other property-specific considerations.
 - For towers 200 feet or less in overall height - within ½ mile from the tower site;
 - For towers more than 200 but less than 400 feet in height - within ¾ mile from the tower site;
 - For towers more than 400 feet in height - within 1 ½ miles from the tower site.

Identification of Historic Resources

The NPA defines the procedures for applicants to identify historic properties within an undertaking's APE for visual and direct effects. These procedures primarily involve the review of records at the MD SHPO to identify historic properties. According to the NPA, field survey is only necessary to identify resources within the APE for direct effects. The NPA lists the following records that must be examined to identify and evaluate historic properties in the APE for direct and visual effects:

1. Properties listed in the National Register of Historic Places;
2. Properties formally determined eligible for listing by the Keeper of the National Register;
3. Properties the MD SHPO certifies are in the process of being nominated to the National Register;
4. Properties previously determined eligible for listing as part of a consensus determination of eligibility between the MD SHPO and a Federal agency;
5. Properties listed in the Maryland Inventory of Historic Properties that the MD SHPO has previously evaluated and determined to be eligible for the National Register. In Maryland, these properties represent those resources that the MD SHPO considers eligible for the National Register as documented in its Determination of Eligibility database.

MHT's Library is the state's principal repository for information about Maryland's architectural, archeological, and cultural resources. The archival collection includes survey documentation for archeological sites and historic resources listed in the Maryland Inventory of Historic Properties and the National Register of Historic Places. Applicants may access all of the required records listed above by utilizing the maps, files, databases, Geographic Information System (GIS), and other records maintained in MHT's Library. Visit MHT's website for information on its research and survey programs: <http://mht.maryland.gov>.

To obtain access to these records and related information for Maryland undertakings, applicants and their consultants should visit MHT's Library. While some of these records are available through MHT's website, visiting the Library is necessary to access all the records and obtain the most current data. MHT's Library is open by appointment to the public on Tuesdays, Wednesdays and Thursdays between 9:30 and 4:30. Please contact Mary Louise de Sarran, MHT Librarian, at MdeSarran@mdp.state.md.us / 410-514-7655 to schedule an appointment.

Archeological Resources

The NPA includes specific provisions for making a reasonable and good faith effort to identify and evaluate archeological properties within an undertaking's APE for direct effects. The agreement clearly identifies situations where field survey is *not* necessary. For undertakings located in Maryland, it is MHT's position that archeological field survey for new towers is generally not warranted, unless the APE for direct effects includes a previously inventoried archeological site or has a high potential for containing National Register eligible archeological resources based on its historical association or environmental conditions.

The NPA requires applicants to include a "report" in its Submission Packet that substantiates its finding that no archeological survey is necessary or presents the results of any field survey. For Maryland submittals, the "report" should consist of a short and concise statement of why the project area has no archeological potential or a brief description of the negative results of any field survey performed. The MHT considers these field surveys to constitute field checks as opposed to Phase I archeological surveys. Thus, production of a full archeology report is not required in these instances. However, if a field survey identifies an archeological site within the APE for direct effects, the MHT expects the applicant to prepare a full Phase I archeological report in accordance with MHT's *Standards and Guidelines for Archeological Investigations in Maryland* (Shaffer and Cole 1994).

Submission Packet/Forms

The NPA requires applicants to prepare a Submission Packet, using FCC Form 620 (new tower) or Form 621 (collocation) as appropriate, for each undertaking covered by the agreement and submit it to the MD SHPO and any consulting parties for review. The Submission Packet includes the relevant form and accompanying attachments required to be submitted with the form. Follow the links below to access the appropriate FCC form:

- FCC Form 620 (new towers): <http://www.fcc.gov/Forms/Form620/620.pdf>
- FCC Form 621 (collocations): <http://www.fcc.gov/Forms/Form621/621.pdf>

E-106 Submittals

In 2008, the FCC introduced a new electronic E-106 submittal system available for applicants to use on a voluntary basis in completing the review process for proposed construction of communications facilities under Section 106 and the FCC's associated Programmatic Agreements. The E-106 system is designed to save users time and resources by automating and expediting the exchange of information and correspondence in the Section 106 process through the use of the FCC's central E-106 website. MHT participates in the new online E-106 system for those applicants who choose to use the system. MHT reviews submittals and provides MHT comments via the E-106 website. For further information on E-106 go to: http://wireless.fcc.gov/outreach/index.htm?job=tower_notification.

Review by MHT / MD SHPO

Applicants submit completed Submission Packets through the E-106 system. Applicants using E-106 should contact MHT to find out if you currently need to provide a hard copy or a PDF copy of your submittal to MHT, as MHT has had some difficulty in viewing the submittal forms through E-106. For applicants not using E-106, provide the completed packets to MHT for review and comment addressed to:

Beth Cole, Administrator
Project Review and Compliance
Maryland Historical MHT
100 Community Place
Crownsville, MD 21032
bcole@mdp.state.md.us / 410-514-7631

The Submission Packet provided to MHT must contain accurate and complete information. MHT recommends that the applicant forward the Submission Packet to the appropriate local government and any consulting parties prior to sending the Submission Packet to MHT. The applicant should include copies of any written comments received from the local government or consulting parties in its Submission Packet to MHT, or provide MHT with copies of any such comments upon receipt.

MHT has 30 calendar days from the receipt of a complete Submission Packet or notification from FCC's E-106 system of a new submission to review the materials and respond. For E-106 submittals, MHT will provide its comments, concurrence, or request additional information through the E-106 system. Based on its review of the Submission Packet, and in accordance with the procedures of the NPA, MHT will respond in one of the following ways:

- Determination that the applicant's Submission Packet is incomplete, along with a description of the deficiencies. The applicant is responsible for addressing the deficiencies and resubmitting an amended Submission Packet to MHT.
- Concurrence with the applicant's determination of *no historic properties affected*. This concludes the Section 106 consultation.
- Concurrence with the applicant's determination of *no adverse effect* on historic properties. This concludes the Section 106 process.
- If MHT disagrees with an applicant's determination of *no historic properties affected/no adverse effect*, it will provide a written response concisely describing the historic properties that may be affected and explaining how the criteria of adverse effect would apply to those properties. In the case of disagreements, the applicant must follow additional procedures of the NPA to conclude the Section 106 process.
- Concurrence with the applicant's determination of *adverse effect* on historic properties. MHT will work with the applicant to develop measures that would avoid the adverse effect and enable a *conditional no adverse effect* determination. If avoidance is not feasible, MHT will consult with the applicant in accordance with the procedures in the NPA to resolve the adverse effect.
- MHT will work with the applicant to satisfactorily resolve any disagreements that arise during consultation. If disputes are not resolved, the applicant may at any time choose to submit the matter to the FCC and proceed through the relevant procedures of the NPA to complete the Section 106 process.

MHT's response will follow one of the following formats: providing official comments through the E-106 system; signing a concurrence line (if one is provided in the Submission Packet); signing MHT's rubber stamp concurrence on the Submission Packet; preparing and submitting a full comment letter; or no response within the 30 day review period. If MHT does not provide written notice to the applicant that it agrees or disagrees with the applicant's determination of *no historic properties affected/no adverse effect* within 30 calendar days of receiving a completed Submission packet then the applicant may proceed in accordance with the NPA.

Useful Resources

To assist applicants and their consultants with the completion of Submission Packets and the consultation process established by the NPA, MHT compiled the following list of useful resources.

FCC: The FCC provides extensive resources for applicants through the following links:

- Historic Preservation for Tower Siting: http://wireless.fcc.gov/siting/historic_preservation.html
- FCC Nationwide Programmatic Agreement (NPA): http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-222A3.pdf
- FCC Collocation Programmatic Agreement: <http://wireless.fcc.gov/releases/da010691a.pdf>
- FCC Form 620 (new towers): <http://www.fcc.gov/Forms/Form620/620.pdf>
- FCC Form 621 (collocations): <http://www.fcc.gov/Forms/Form621/621.pdf>
- FCC E-106 & TCNS: http://wireless.fcc.gov/outreach/index.htm?job=tower_notification

Maryland Historical Trust (MHT) / MD SHPO: For additional information about MHT's programs and services, visit the website at <http://mht.maryland.gov>.

Section 106 Process: To learn more about the Section 106 consultation process, visit the website of the Advisory Council on Historic Preservation at www.achp.gov.

National Register of Historic Places: To obtain listings and information regarding Maryland's historic properties and districts listed in the National Register of Historic Places, visit *National Register Listings* on MHT's website at <http://mht.maryland.gov>.

Cultural Resource Professionals: The NPA requires certain actions conducted under the agreement to be completed by a person who meets the Secretary of Interior's Professional Qualifications Standards as Archeologist, Architectural Historian, Historic Architect, or Historian (see, FR 44738-9 or 36 CFR Part 61, available online at http://www.nps.gov/history/local-law/Prof_Qual_83.htm). MHT maintains a Consultant Directory which offers a searchable list of consultants by discipline and service, available at <http://mht.maryland.gov>. Inclusion in the directory is not a certification or endorsement of any particular consultant by MHT.

Indian Tribes: The applicant is responsible for notifying federally-recognized Tribes about the proposed tower. All applicants are responsible for using the Tower Construction Notification System (TCNS) established by the FCC. Information on TCNS is available at: http://wireless.fcc.gov/outreach/index.htm?job=tower_notification.

Although no state or federally recognized tribes currently reside in Maryland, Indian tribes who reside outside the state may attach importance to historic properties located in Maryland. Further resources on tribal contacts include:

- The Department of the Interior's list of federally recognized tribes issued on April 4, 2008, titled: "Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs": <http://www.narf.org/nill/resources/fr2008.pdf>
- The National Park Service maintains a database searchable by tribal name, state and county name: <http://home.nps.gov/nacd/>
- The National Association of Tribal Historic Preservation Officers: <http://www.nathpo.org/mainpage.html> (There are currently no THPOs in MD.)

Maryland Commission on Indian Affairs: The Maryland Commission on Indian Affairs (MCIA) serves as the official statewide agency for American Indians and initiates and supports a wide range of activities that promote the welfare of Maryland's Indian people and further the understanding of American Indian history and culture. The MCIA also provides a forum for the concerns of Maryland's Indian communities and operates as a vital liaison between these communities and state and federal governments. For further information about MCIA, visit: <http://www.americanindian.maryland.gov/>.

Public Participation and Consulting Parties: The applicant is responsible for contacting the local government that has primary land use jurisdiction over the site of the planned project and providing written notification of the undertaking. The applicant is also responsible for notifying the public and interested parties. The notice of the project should include all of the information required in the NPA. To identify potentially interested parties in Maryland, visit MHT's website and access the searchable directory of Preservation *Organizations* in Maryland: <http://mht.maryland.gov>. The directory includes county preservation offices, Certified Local Governments, historic district commissions, Certified Heritage Areas, and related organizations. This list is not all-inclusive, so applicants should make a good faith effort to identify other interested parties relevant to each specific undertaking.

Further Information: For information or assistance regarding Section 106 submittals for FCC applicants, contact MHT staff - Beth Cole at bcole@mdp.state.md.us / 410-514-7631.